

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1054

Introduced by Assembly Member Coto

February 27, 2009

An act to amend Section ~~1629.79~~ 1861.05 of the Insurance Code, relating to ~~motor vehicle insurance~~ *insurance rates*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1054, as amended, Coto. Motor vehicle insurance: ~~assigned risk~~ *rates*.

Existing law provides that rates set by the commissioner pursuant to Proposition 103 of the 1988 statewide general election may be judicially challenged for various reasons, as specified.

This bill would provide that any rate filing, as defined, approved by the commissioner may be challenged, as provided. The bill would prohibit any retrospective adjustment of an approved filing from being awarded unless the insurer has not complied with the terms of the approval. This bill would exclude expenses paid to credit card issuers by the insurer as a result of premiums paid made by credit card from the calculation to determine the insurer's efficiency standard.

This bill would find and declare that this act furthers the purposes of Proposition 103, and would make supporting and related findings and declarations.

Because this bill would amend Proposition 103, it would require a $\frac{2}{3}$ vote of each house of the Legislature for enactment.

~~Existing law establishes a low-cost automobile insurance program for all counties, as specified. Under existing law, the certain counties were authorized to commence operations on January 1, 2000 and January~~

~~1, 2006, and also authorized the commissioner to adopt emergency regulations in order to implement those programs.~~

~~This bill would delete the authorization for the commissioner to adopt those regulations as emergency regulations.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1861.05 of the Insurance Code is amended
2 to read:

3 1861.05. Approval of Insurance Rates. (a) No rate shall be
4 approved or remain in effect which is excessive, inadequate,
5 unfairly discriminatory or otherwise in violation of this chapter.
6 In considering whether a rate is excessive, inadequate or unfairly
7 discriminatory, no consideration shall be given to the degree of
8 competition and the commissioner shall consider whether the rate
9 mathematically reflects the insurance company's investment
10 income.

11 (b) Every insurer which desires to change any rate shall file a
12 complete rate application with the commissioner. A complete rate
13 application shall include all data referred to in Sections 1857.7,
14 1857.9, 1857.15, and 1864 and such other information as the
15 commissioner may require. The applicant shall have the burden
16 of proving that the requested rate change is justified and meets the
17 requirements of this article.

18 (c) The commissioner shall notify the public of any application
19 by an insurer for a rate change. The application shall be deemed
20 approved ~~sixty~~ 60 days after public notice unless (1) a consumer
21 or his or her representative requests a hearing within ~~forty-five~~ 45
22 days of public notice and the commissioner grants the hearing, or
23 determines not to grant the hearing and issues written findings in
24 support of that decision, or (2) the commissioner on his or her own
25 motion determines to hold a hearing, or (3) the proposed rate
26 adjustment exceeds ~~7%~~ 7 percent of the then applicable rate for
27 personal lines or ~~15%~~ 15 percent for commercial lines, in which
28 case the commissioner must hold a hearing upon a timely request.
29 In any event, a rate change application shall be deemed approved
30 180 days after the rate application is received by the commissioner
31 (A) unless that application has been disapproved by a final order

1 of the commissioner subsequent to a hearing, or (B) extraordinary
2 circumstances exist. For purposes of this section, “received” means
3 the date delivered to the department.

4 (d) For purposes of this section, extraordinary circumstances
5 include the following:

6 (1) Rate change application hearings commenced during the
7 180-day period provided by subdivision (c). If a hearing is
8 commenced during the 180-day period, the rate change application
9 shall be deemed approved upon expiration of the 180-day period
10 or 60 days after the close of the record of the hearing, whichever
11 is later, unless disapproved prior to that date.

12 (2) Rate change applications that are not approved or
13 disapproved within the 180-day period provided by subdivision
14 (c) as a result of a judicial proceeding directly involving the
15 application and initiated by the applicant or an intervenor. During
16 the pendency of the judicial proceedings, the 180-day period is
17 tolled, except that in no event shall the commissioner have less
18 than 30 days after conclusion of the judicial proceedings to approve
19 or disapprove the application. Notwithstanding any other provision
20 of law, nothing shall preclude the commissioner from disapproving
21 an application without a hearing if a stay is in effect barring the
22 commissioner from holding a hearing within the 180-day period.

23 (3) The hearing has been continued pursuant to Section 11524
24 of the Government Code. The 180-day period provided by
25 subdivision (c) shall be tolled during any period in which a hearing
26 is continued pursuant to Section 11524 of the Government Code.
27 A continuance pursuant to Section 11524 of the Government Code
28 shall be decided on a case by case basis. If the hearing is
29 commenced or continued during the 180-day period, the rate
30 change application shall be deemed approved upon the expiration
31 of the 180-day period or 100 days after the case is submitted,
32 whichever is later, unless disapproved prior to that date.

33 *(e) In calculating an insurer’s expenses for purposes of*
34 *determining its efficiency standard, the commissioner shall not*
35 *include expenses paid to credit card issuers by the insurer as a*
36 *result of premium payments made by credit card as defined in*
37 *subdivision (a) of Section 1747.02 of the Civil Code.*

38 *(f) Any rate filing approved by the commissioner may be*
39 *challenged as provided in this chapter. However, no retrospective*
40 *adjustment of an approved rate filing may be awarded unless the*

1 *person challenging the rate filing establishes that the insurer has*
2 *not complied with the approval. “Rate filing” includes the filed*
3 *rates, premiums, and rating.*

4 *SEC. 2. The Legislature finds and declares that this act furthers*
5 *the purposes of Proposition 103 of the November 8, 1988, statewide*
6 *general election. Specifically, the Legislature finds and declares*
7 *all of the following:*

8 *(a) Allowing insureds to use credit cards to pay the premiums*
9 *on insurance coverage they are legally required to carry is an*
10 *important option for insureds in this difficult economy.*

11 *(b) Insurers that allow insureds to use credit cards to pay*
12 *premiums are generally absorbing the costs charged to the insurer*
13 *for the use of the credit card.*

14 *(c) Including expenses paid by the insurer as a result of an*
15 *insured’s use of a credit card in the calculation to determine an*
16 *insurer’s efficiency standard may discourage insurers from*
17 *accepting credit card payments from insureds to pay premiums in*
18 *full.*

19 *(d) By excluding expenses paid to credit card issuers by an*
20 *insurer as a result of premiums paid made by credit card, this act*
21 *further the purpose of Proposition 103 by ensuring that insurance*
22 *is fair, available, and affordable to all consumers during this*
23 *difficult economy.*

24 *(e) Current law provides specific steps for rate approval,*
25 *including liberal provision for consumer participation both before*
26 *and after an approval.*

27 *(f) Insurers whose rates have been approved pursuant to*
28 *subdivision (c) of Section 1861.01 and subdivision (c) of Section*
29 *1861.05 are subject to harsh penalties under Sections 1859.1 and*
30 *1861.14 for failing to comply strictly with the terms of the*
31 *approvals, including potential loss of their certificates of authority.*

32 *(g) While preserving all existing rights to challenge an approval,*
33 *this act also protects reasonable reliance on the commissioner’s*
34 *rate approval process by ensuring that an insurer is not held*
35 *retrospectively liable for a return of premium provided that the*
36 *insurer has met the terms of the commissioner’s final order as*
37 *embodied in a lawfully secured rate approval.*

38 *(h) This act furthers the purpose of Proposition 103 by providing*
39 *certainty to insurers and consumers following the commissioner’s*

1 *rate approval and by ensuring that the insurance commissioner*
2 *is held accountable.*

3 ~~SECTION 1. Section 11629.79 of the Insurance Code is~~
4 ~~amended to read:~~

5 ~~11629.79. (a) The program for the County of Los Angeles and~~
6 ~~the City and County of San Francisco is authorized to commence~~
7 ~~operations on January 1, 2000, but shall be fully operational no~~
8 ~~later than July 1, 2000.~~

9 ~~(b) To this end, the commissioner, in consultation with the~~
10 ~~California Automobile Assigned Risk Plan, shall adopt regulations~~
11 ~~to implement the provisions of this article within 60 days of its~~
12 ~~effective date.~~

13 ~~(c) The program for the Counties of Alameda, Fresno, Orange,~~
14 ~~Riverside, San Bernardino, and San Diego shall commence~~
15 ~~operations on April 1, 2006, and shall be made operational in all~~
16 ~~other counties of California according to the discretion of the~~
17 ~~commissioner. The commissioner, in consultation with the~~
18 ~~California Automobile Assigned Risk Plan, shall adopt regulations~~
19 ~~to implement the expansion of the program to these counties.~~